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SIPDIS

STATE FOR WHA/CAR (WBENT), EB/TRD (MATTINGLEY), WHA/EPSC (JSLATTERY), EB/IPC, AND EB/CBA

SANTO DOMINGO FOR FCS AND FAS

E.O. 12958: NA

TAGS: [ECON](#) [ETRD](#) [JM](#) [EIPR](#)

SUBJECT: STATUS OF INTELLECTUAL PROPERTY RIGHTS IN JAMAICA

REF: A) 03 KINGSTON 002669 B) STATE 0079084

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SUMMARY  
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1. (U) The issue of intellectual property rights (IPR) continues to be a challenge for the GOJ. Following the announcement that Jamaica has been retained on the Special 301 watch list and expressions of concern from members of the business community, Econoff met with the Jamaica Intellectual Property Office (JIPO) on April 25 to discuss the country's progress with IPR legislation and enforcement. The agency itself has been aggressively working to update the legal framework and enhance enforcement efforts, but have been hampered by a lack of training and resources, and a low priority on the legislative agenda. The potential exists, however, for the enforcement situation to improve through training and technical assistance from the private sector. End Summary.

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CURRENT IPR ISSUES  
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2. (U) The issue of intellectual property rights (IPR) has been a vexing problem for Jamaica over the past several decades. Due to their inexperience in this area after independence, the GOJ failed to protect the musical and artistic creations of native performers and other IP makers. One notable result is that Japan presently earns more than Jamaica from merchandising based on the works of Bob Marley. Since 2001, the GOJ has taken a more organized approach to improving the country's IPR infrastructure, passing new laws and creating a new agency to coordinate IPR education, legislation and enforcement activities (Ref A). These efforts have had some success, but the country is still lacking in several key areas. Jamaica was retained on the Special 301 watch list (ref B) due to its failure to pass updated patent protection legislation in a timely manner, and weak enforcement of the new laws (due to a lack of resources and training) has generated complaints from the business community and statements of concern from intellectual property creators.

3. (SBU) On April 25, Econoff met with Douglas Graham, president of Palace Amusement Co., which operates all of Jamaica's movie theatres. Graham complained that his business was being substantially damaged by the flood of pirate DVDs entering Jamaica from the United States, many containing first-run movies that are still playing in theaters. According to the statistics he presented, attendance at Jamaican movie houses is down 40 percent since 2000. Graham blames the drop on the pirated DVDs, since his former customers are now viewing the movies his theaters are showing on DVDs either purchased from an unlicensed vendor, rented, or on television, courtesy of their local cable provider. Graham says that he has brought his complaints to the Jamaica Intellectual Property Office (JIPO), but that they have been unable to help him thus far.

4. (SBU) On April 29, Jane Saunders, Vice President for International Commercial Affairs at the Motion Picture Association of America (MPAA), contacted Econoff, inquiring as to the validity of rumors that the GOJ was considering enacting compulsory licenses for satellite television transmissions. Saunders stated that the MPAA was currently fighting similar laws in the Bahamas and Trinidad and Tobago, and wanted to know if they needed to start proceedings in Jamaica. Saunders also suggested that the MPAA would be willing to provide technical experts to train law enforcement officials in IPR issues if the GOJ would host a conference for the English-speaking Caribbean.

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MEETING WITH JIPO  
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5. (SBU) On May 3, Econoff, ECON FSN and FCS FSN met with Loreen Walker, Executive Director of JIPO, and Carol Simpson, Senior Program Manager at JIPO, to discuss JIPO's

track record since its formation in 2001. JIPO is four years old, having come into existence in 2001 as the GOJ attempted to bring all IPR authority under one roof to more efficiently work on TRIPS implementation. Their mandate is to improve enforcement of IPR in Jamaica and to protect Jamaica IPR in other countries.

16. (SBU) Walker told Emboffs that JIPO's primary focus is on educational efforts. These include the creation of a public education campaign about intellectual property rights and piracy, as well as coordination with law enforcement efforts. JIPO works closely with the IPR unit of the Jamaica Constabulary Force (JCF), which consists of five officers. They also serve as consultants for court cases involving intellectual property issues, as Jamaican law schools do not presently include IPR law as part of the curriculum. They have also been working to get modernized language drafted for a new law that will bring Jamaica's patent protections up to international standards. (Note: The lengthy delay in getting this key piece of legislation passed directly resulted in Jamaica's retention on the Special 301 watch list for 2005 (Ref B). End note.)

17. (SBU) Walker described some of the successes of JIPO to date. They have spearheaded a GOJ effort to reduce illegal photocopying at universities by strictly enforcing copyright laws, and have assisted two local copyright societies become sufficiently established to attract an increasing number of Jamaican musicians, who had previously belonged to foreign copyright unions. Of the thirty-six copyright criminal cases submitted to resident magistrate courts since 2001, fourteen have resulted in convictions and fines. Since 2003, there has been a significant increase in criminal prosecutions, as the JCF unit is continuing to go after smaller players in the underground industry. Walker said she felt it was quite a feat to have the Justice Ministry create the IPR taskforce in the first place, given the surging violent crime that makes headlines daily, and draws greater demands for resources.

18. (SBU) Regarding the MPAA query, Walker stated that, while compulsory licenses for rebroadcast of proprietary signals had been discussed by the GOJ for several years, the final decision had been made not to proceed with it, due to JIPO's understanding that it would have been in contravention of international accords to which Jamaica is a party. She admitted being unsure of the specifics of the laws and treaties involved, and happily received MPAA-provided informational packets regarding problems with the Bahamian and Trinidadian compulsory licensing laws.

19. (SBU) When asked about the problem of pirate DVDs impacting on the Palace Amusement theatres, Walker responded that JIPO has worked with the JCF on numerous cases involving counterfeit DVDs, but that with only five officers and limited equipment, much of the criminal activity goes by without being challenged. She said that the enforcement infrastructure in Jamaica was lacking, and that law enforcement officials throughout the system needed additional training in how to deal with IPR issues. Customs agents needed training in how to spot pirated products at the ports of entry. The JCF unit requires more personnel, equipment and training. Judges and prosecutors also require more education in how to adjudicate IPR cases. Also, under Jamaican law, only the original holder of the copyright (the maker of the movie) can sue for damages with much chance of success. According to Walker, JIPO has contacted the MPAA to assist with the prosecution of several cases, but it was largely unsuccessful in convincing its members file to legal claims in the Jamaican court system.

110. (SBU) Emboffs related Saunders' suggestion of a regional IPR seminar, wherein the MPAA would provide speakers for law-enforcement agent training if the host governments could fund the overall conference. Walker and her staff were very enthusiastic about the idea. (Note: Subsequently, the Kingston-based American Chamber of Commerce (AMCHAM) expressed interest in helping to facilitate such a conference, and Emboff has put representatives of all three organizations (MPAA, AMCHAM, JIPO) in contact with each other. End note.)

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COMMENT  
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111. (U) JIPO is sincerely committed to establishing a regulatory framework for the protection of intellectual property rights. However, the Parliament and other ministries do not share JIPO's enthusiasm. Judging by the lengthy delay in the preparation of the new Patents Act, the issue is not a high priority for the GOJ as a whole. Also, though the legislative framework is nearly complete, resources are sorely lacking on the enforcement front, leaving the JCF's IP unit with a mere five officers and no equipment (not even a single computer) to aid them in their

duties. Without additional resources and training, the JCF's enforcement efforts will amount to no more than a drop in the bucket against the burgeoning flood of pirated media now entering the country. Post will encourage MPAA, JIPO and AMCHAM to work together to organize the conference proposed by the MPAA, and to better coordinate their IPR efforts. End Comment.

ROBINSON